

### **REMARKS/ARGUMENTS**

The Final Office Action of March 16, 2010 has been carefully reviewed and these remarks are responsive thereto. Claims 1, 2, 5, 8, 9, 11 and 16-26 were pending in the Office Action. Upon entry of the present paper, these claims remain pending, and none are amended.

#### **Rejections under 35 U.S.C. § 103(a)**

In the Office Action, the claims were treated as follows: Claims 1, 2, 8 and 9 were rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over U.S. Publication No. 2002/0069420 A1 to Russell et al. ("Russell") in view of U.S. Publication No. 2004/0153207 A1 to Peck ("Peck"). Claims 5, 11 and 25 were rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Russell in view of U.S. Patent No. 6,275,496 B1 to Burns et al. ("Burns"). Claims 16-19 were rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over U.S. Patent No. 5,781,910 to Gostanian et al. ("Gostanian") in view of U.S. Publication No. 2005/0050218 A1 to Sheldon ("Sheldon") in view of U.S. Publication No. 2004/0193712 A1 to Benenati et al. ("Benenati") and further in view of Burns. Claims 20 and 21 were rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Gostanian in view of U.S. Publication No. 2005/0102297 A1 to Lloyd et al. ("Lloyd"). Claims 22-24 were rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Russell in view of U.S. Patent No. 6,201,536 B1 to Hendricks et al. ("Hendricks"). Claim 26 was rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Russell in view of U.S. Publication No. 2002/0188732 A1 to Buckman et al. ("Buckman"). Applicants respectfully traverse these rejections.

#### **Finality of the Action**

As a preliminary matter, Applicants submit that the finality of the Action is improper. Specifically, the Action withdraws the prior rejection of claim 18, and makes a new rejection (adding 3 new references to the mix), but the only change in the last amendment was to place dependent claim 18 in independent form. Applicants submit that this simple change cannot have reasonably required the new grounds of rejection and new references, and that the current Office

Action should have been made non-final to allow Applicants a fair opportunity to respond to the new rejection.

**Independent Claim 1 and Dependent Claims 2, 5, 22, 23 and 25**

Turning to the art-based rejections, claim 1 recites something that happens in response to a communication failure. Specifically, claim 1 recites the following (emphasis added):

“using, by a facility computing device, the failsoft rules to preliminarily grant approval for the requested transaction in response to determining that a communication failure exists between the facility and the database at the time of the transaction request.”

In rejecting this claim, the Action alleges that the excessive download feature described at Russell et al., para. [0093] has such a response to a communication failure. In that cited portion, the Russell et al. main server checks to see how many times a given URL has requested to download a content item, and if the URL has tried too many times (e.g., 3 times), the next download request is denied. What, exactly, is the alleged “communication” failure here? The Russell et al. main server appears to be communicating just fine with the requesting user.

If the alleged “failure” is the fact that the URL is denied access because it has tried too many times, and even assuming that such a “failure” is a “communication” failure, then what is the “preliminarily grant[ed] approval for the requested transaction in response to” such a denial of access? (emphasis added) Russell et al.’s main server does not appear to respond to this “failure” by preliminarily granting approval for the requested download. To the contrary, Russell et al.’s main server simply denies the requested download. This deficiency is even more apparent in view of the claim’s earlier recitation of “limited transaction approval” in the failsoft rules. Russell et al.’s alleged failsoft rules do not have such limited transaction approval.

The secondary reference of Peck does not overcome these deficiencies. The Office cites Peck paragraph [0064], which discusses communicating error messages by audio and video in event of a failed transmission. These error messages, if combined with Russell et al. (a combination that Applicants do not agree is even proper), would simply result in the Russell et

al. system sending error messages when a transmission failed. There would still be no resulting limited transaction approval, or preliminarily granting approval for the requested transaction, as recited.

For at least these reasons, Applicants submit that independent claim 1 distinguishes over the alleged combination of Russell et al. and Peck. Claims 2, 5, 22-23 and 25 depend from claim 1, and are distinguishable for at least the same reasons, and further in view of the various features recited therein.

#### **Independent Claim 8 and Dependent Claims 9, 11 and 26**

Independent claim 8 recites, among other features, the following:

determining that a communication failure has delayed or disrupted the process of obtaining approval of the request from the authorization computer; and  
in response to the communication failure, approving or denying the request for content according to the facility's received set of failsoft rules

In rejecting this claim, the Office cites the same portions of Russell et al. and Peck discussed above, and Applicants submit that the rejection suffers from similar issues as discussed above with respect to claim 1. For example, the claim recites determining that a communication failure has occurred. In Russell et al., the alleged "failure" is not a communication failure – the main server appears to be communicating just fine.

Peck fails to remedy the deficiencies of Russell with respect to claim 8, and thus claim 8 is allowable over the asserted combination at least for the reasons discussed above. Claims 9, 11 and 26 each depend from claim 8 and are thus allowable over the asserted combination of Russell and Peck at least for the same reasons as claim 8, and further in view of the various features recited therein.

#### **Independent Claim 18 and Dependent Claims 16, 17, and 19-21**

As noted above, Applicants submit that the new rejection of claim 18 should have prevented the Action from becoming final.

Regarding the new rejection, Applicants are a bit uncertain as to the Office's position regarding Burns et al. The prior Action relied solely on Burns et al., and Applicants argued that Burns et al. failed to show the following claimed feature:

wherein the at least one headend IT infrastructure is programmed to determine an availability of access to the central database, and in the event that access to the central database is unavailable, handle real-time transactions, without real-time access to the central database, in accordance with the policy limits, thereby providing failsoft headend facility operation

In the current Action, the Office withdrew the prior rejection of claim 18, but in the new rejection, the Office once again relies on Burns et al. for this feature. Applicants' response on this point is the same as it was before – the Burns et al. local service provider 110 checks its own cache, and uses its local copy if it is there. This is done regardless of whether access to the target source is available. Accordingly, and as noted before, Burns et al. does not determine an availability of access to the central database, or respond in the manner recited. The new references are only cited for other aspects of claim 18, and do not overcome the deficiency which remains in Burns et al.

Claims 16-17 and 19-21 depend from claim 18, and are distinguishable for at least the same reasons as claim 18, and further in view of the various features recited therein.

### CONCLUSION

All rejections having been addressed, applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same.

Respectfully submitted,  
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